

BEFORE THE
SHORELINES HEARINGS BOARD
STATE OF WASHINGTON

IN THE MATTER OF A SUBSTANTIAL)
DEVELOPMENT PERMIT ISSUED BY CITY OF)
WINSLOW TO AMCO INVESTMENTS, INC.)

KEITH M. DAVIS and BAINBRIDGE)
ISLAND CONCERNED CITIZENS, et al.,)

Appellants,)

vs.)

CITY OF WINSLOW and AMCO)
INVESTMENTS, INC.,)

Respondents,)

STATE OF WASHINGTON, DEPARTMENT OF)
ECOLOGY and SLADE GORTON, ATTORNEY)
GENERAL,)

Intervenors.)

SHB Nos. 114 and 114-A

FINDINGS OF FACT,
CONCLUSIONS OF LAW AND ORDER

On October 1, 1973 the City of Winslow granted a shoreline
management substantial development permit to AMCO Investments, Inc. for
construction of condominium units on the north side of Eagle Harbor.

This action resulted from a request for review filed by appellants,

EXHIBIT 1

1 Bainbridge Island Concerned Citizens, Dale Lehn, Clifford Thompson,
2 Jesse Hay, Rachel Smith, and Charlotte Myrick on November 1, 1973, and
3 from a request for review filed by appellant, Keith M. Davis, filed on
4 November 1, 1973. The State of Washington Department of Ecology and
5 Slade Gorton, Attorney General, certified these requests for review and
6 moved to intervene in these requests on November 27, 1973. AMCO
7 Investments, Inc. was joined as an additional party by the Shorelines
8 Hearings Board on December 21, 1973. The two requests for review were
9 consolidated by the Shorelines Hearings Board on December 21, 1973. The
10 State of Washington Department of Ecology and Slade Gorton, Attorney
11 General, were granted leave to intervene on January 11, 1974 by the
12 Shorelines Hearings Board.

13 A formal hearing on the request for review (Walt Woodward, presiding
14 officer) was held before the Board in Winslow, Washington on April 8, 9,
15 and 10, 1974 and April 29 and 30, 1974.

16 Appellants, Bainbridge Island Concerned Citizens, Dale Lehn,
17 Clifford Thompson, Jesse Hay, Rachel Smith, and Charlotte Myrick
18 appeared through Irving M. Clark, Jr. and J. Richard Aramburu. Appellant,
19 Keith M. Davis appeared pro se. Intervenors, Washington State Department
20 of Ecology and Slade Gorton, Attorney General, appeared through Robert
21 V. Jensen, Assistant Attorney General. Respondent, AMCO Investments, Inc.,
22 appeared through Peter Buck. Respondent, City of Winslow, appeared
23 through Robert McKisson.

24 Witnesses were sworn and testified. Exhibits were admitted.
25 Intervenors, Washington State Department of Ecology and Slade Gorton,
Attorney General, and respondent, AMCO Investments, Inc., presented

27 FINDINGS OF FACT,
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1 written arguments.

2 Subsequent to the hearing, the Board issued a Memorandum Preliminary
3 to Proposed Order.

4 From testimony heard, exhibits examined, and arguments considered,
5 the Shorelines Hearings Board makes these

6 FINDINGS OF FACT

7 I.

8 Eagle Harbor is a sheltered harbor on Bainbridge Island. It lies
9 on the west side of Puget Sound. The majority of the north side of
10 Eagle Harbor lies within the boundaries of the City of Winslow. The
11 remaining portions of the harbor lie in unincorporated Kitsap County.
12 The AMCO property lies in the City of Winslow on the north side of
3 Eagle Harbor.

14 II.

15 The AMCO tract is level and irregular in shape. It lies immediately
16 to the north and east of the property of the Washington State Ferry
17 Repair Shops. It lies immediately to the south and west of the Washington
18 State Ferry Terminal property. On the west is a lagoon fed by a small
19 creek. On the southeasterly side of the property lies a beach
20 consisting of mixed sand and small gravel. Access to the site is by
21 Olympic Drive which connects the ferry terminal with Winslow Way East,
22 the main arterial into downtown Winslow. Directly to the north of
23 Olympic Drive are several commercial parking lots.

24 III.

25 There is an existing commercial-boat moorage area on a portion of
the AMCO property. This area is leased to and operated by Russell Trask.

27 FINDINGS OF FACT,

CONCLUSIONS OF LAW AND ORDER

1 To the west of this commercial facility lies a small privately operated
2 pleasure craft marina.

3 IV.

4 AMCO presented plans for construction of a Planned Unit Development
5 consisting of four condominium buildings which included 112 condominium
6 residential units. The plan was well designed and is subject to contract
7 policing by the City of Winslow. The project will improve a run-down
8 portion of the City of Winslow.

9 V.

10 The Shorelines Hearings Board, after its hearing, issued a
11 Memorandum Preliminary to Proposed Order which suggested a practical
12 resolution of the differences between the parties.

13 VI.

14 A Declaration of Covenants, Conditions, and Restrictions similar
15 to that attached in Exhibit A (hereinafter "Declaration") will preclude
16 construction of one of the four condominium buildings; what was
17 identified as Building Number 4 falls partially within the area
18 reserved for other uses. The Declaration will require an area for the
19 continued operation of a pleasure-craft marina and/or a commercial-boat
20 facility and related activities. The Declaration will require an area
21 for future access to a marina, if ever constructed, between the
22 Washington State Ferry Terminal and the Washington State Ferry Repair
23 Shops.

24 VII.

25 There is need for restriction of a portion of the property to
allow for continued operation of a pleasure-craft marina and/or a

27 FINDINGS OF FACT,
CONCLUSIONS OF LAW AND ORDER

1 commercial-boat facility and related activities. There is need for
2 restriction of an area to allow for future access to a marina. There
3 is need for multi-family, residential-waterfront units in the City of
4 Winslow. A permit conditional upon the Declaration will meet these
5 various needs.

6 VIII.

7 There currently is no public access to the beach between the
8 Washington State Ferry Repair Shops and the Washington State Ferry
9 Terminal. Under this permit a pedestrian and bicycle walkway for the
10 public will be provided along the north and northeast property lines.
11 This walkway will be constructed during Phase I of the project. The
12 west end of this walkway will remain available for connection to the
13 proposed Winslow City Park if the City of Winslow desires such a
14 connection. The east end of the walkway will connect with the beach
15 and will remain available for connection to the Washington State Ferry
16 Terminal property if Washington State desires such a connection. The
17 walkway will be shown in Exhibit No. 8 in the Environmental Impact
18 Statement for this project, a copy of which was introduced in the
19 hearing. The applicant will remove man-made debris on the beach of the
20 AMCO property from the Washington State Ferry Terminal to the
21 Washington State Ferry Repair Shops. This beach will be open to the
22 general public for public uses such as walking or picnicking and for
23 access to a marina if ever constructed in that area.

24 IX.

25 This project would increase the public's opportunity to enjoy the
physical and aesthetic qualities of the shorelines of the state. Such

27 FINDINGS OF FACT,
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1 enjoyment would occur both for condominium residents and for the
2 general public who use the public access to the beach. Such enjoyment
3 would also occur for persons using the pleasure-craft marina adjacent
4 to the property.

5 X.

6 The operation of a pleasure craft marina and/or a commercial boat
7 facility and related activities and the use by the public of the beach
8 on the AMCO property are unique to and dependent upon the use of the
9 state's shorelines and are water dependent uses.

10 XI.

11 The proposed project would not lead to any additional pollution of
12 Eagle Harbor. The proposed project is designed in a manner which
13 minimizes, insofar as practicable, any resultant damage to the ecology
14 and environment and any interference with the public's use of the water.

15 XII.

16 The buildings proposed under this permit will not obstruct the
17 views of a substantial number of residences in areas adjoining the
18 shorelines. The buildings proposed under this permit will not obstruct
19 the views of a significant number of people in any areas surrounding
20 the project.

21 XIII.

22 Bainbridge Island and the City of Winslow contain a large number
23 of people who commute to work in Seattle via the Washington State Ferry
24 Terminal. Condominium units on the AMCO property would be within walking
25 distance of one of the state's largest forms of mass transit, the
Washington State Ferry System. Condominium units on the AMCO property

27 FINDINGS OF FACT,
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1 would be within walking distance of the shopping areas of the City of
2 Winslow. Residential units on this property would facilitate minimal
3 use of private automobiles.

4 XIV.

5 An adequate environmental impact statement was prepared for this
6 project.

7 XV.

8 The City of Winslow Planning Commission and the City of Winslow
9 City Council fully considered and complied with the requirements of the
10 Shoreline Management Act and the Department of Ecology's regulations
11 and guidelines in granting the permit.

12 XVI.

13 Overriding considerations of public interest will be served by
14 the project contemplated by this permit as modified by this Board.

15 XVII.

16 The AMCO plans are designed at a level of density of site coverage
17 and of occupancy compatible with the physical capabilities of the
18 shorelines and water. Substantial portions of the land are reserved
19 as open space or recreational areas for the joint use of the occupants
20 of the development. The project is designed so as to adequately protect
21 the water and shoreline aesthetic characteristics. Sewage disposal
22 facilities, as well as water supply facilities, will be provided in
23 accordance with appropriate state and local health regulations. Storm
24 drainage facilities will be separate not combined with sewage disposal
25 systems.

26 FINDINGS OF FACT,

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XVIII.

This project will provide an opportunity for substantial numbers of people to enjoy the shorelines of the state.

XIX.

Any Conclusion of Law hereinafter recited which should be deemed a Finding of Fact is hereby adopted as such.

From these Findings the Shorelines Hearings Board comes to these

CONCLUSIONS OF LAW

I.

A permit conditional upon the Declaration is consistent with and in compliance with the Shoreline Management Act and its policy, the Washington State Department of Ecology's applicable guidelines and regulations, and the master program being developed for the area insofar as it can be ascertained.

II.

A permit conditional upon the Declaration is consistent with and in compliance with the policy and preferences stated in RCW 90.58.020.

III.

The applicant, AMCO, sustained its burden of proof required under RCW 90.58.140(6).

IV.

The buildings contemplated by this permit are consistent with and in compliance with RCW 90.58.320.

V.

Overriding considerations of public interest will be served by issuance of the permit.

FINDINGS OF FACT,
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VI.

It was not proved that:

1. The proceedings in the City of Winslow and the permit were inconsistent with RCW 90.58.130.
2. The project was not in conformance with WAC 173-16-060(9).

VII.

The project contemplated under this permit is in conformance with WAC 173-16-060(8).

VIII.

Any Finding of Fact which should be deemed a Conclusion of Law is hereby adopted as such.

Therefore the Shorelines Hearings Board issues this

ORDER

The permit is remanded to the City of Winslow for addition of the condition that construction occur under this permit only when a Declaration of Covenants, Conditions, and Restrictions similar to Exhibit A attached hereto and made a part hereof is made and recorded with the Kitsap County Auditor.

DONE at Lacey, Washington this 12th day of September, 1974.

SHORELINES HEARINGS BOARD

Walt Woodward
WALT WOODWARD, Chairman

Robert E. Beatty
ROBERT E. BEATTY, Member

Robert F. Hintz
ROBERT F. HINTZ, Member

Ralph A. Beswick
RALPH A. BESWICK, Member

FINDINGS OF FACT,
CONCLUSIONS OF LAW AND ORDER

DECLARATION
OF
COVENANTS, CONDITIONS, AND RESTRICTIONS

THIS DECLARATION is made on the day hereinafter set forth by AMCO INVESTMENTS, INC., a Washington corporation; EDWARD CUNNINGHAM and DARLENE CUNNINGHAM, his wife; E. S. LOVELL and HAZEL M. LOVELL, his wife, and W. D. LOVELL and CAROLINE J. LOVELL, his wife, hereinafter collectively referred to as "Declarant."

WITNESSETH:

WHEREAS Declarant is the owner of certain property in the City of Winslow, County of Kitsap, State of Washington, as more particularly described in Exhibit "1" under the heading "AMCO PROPERTY" (hereinafter called "the AMCO Property"), which is attached hereto, incorporated herein and by this reference made a part hereof as if set out in full; and

WHEREAS Declarant made application to the City of Winslow for a Permit for Shoreline Management Substantial Development in May, 1973, and such permit was granted by the City of Winslow in October, 1973, and

WHEREAS the granting of such permit was subsequently appealed to and reviewed by the Shorelines Hearings Board of the State of Washington; and

WHEREAS the Shorelines Hearings Board of the State of Washington remanded such action to the City of Winslow for addition of the condition that this Declaration of Covenants, Conditions, and Restrictions be made and filed with the Kitsap County Auditor.

NOW, THEREFORE DECLARANT HEREBY DECLARES

OPERATION OF THIS DECLARATION

This Declaration shall operate and have force and effect only if Declarant develops the AMCO Property pursuant to the Permit for

Shoreline Management Substantial Development issued by the City of Winslow in October, 1973, and subsequently remanded by the Shorelines Hearings Board of the State of Washington to the City of Winslow for addition of conditions. If Declarant does not develop the property pursuant to the Permit for Shoreline Management Substantial Development, this Declaration shall have no force or effect and shall be revoked.

RESERVATION OF MOORAGE SPACES

Declarant declares that, insofar as it is controllable by Declarant, in moorages on or adjacent to the AMCO Property for every boat moorage reserved for or used by a condominium resident, two boat moorages will be reserved for or used by the general public subject to the same terms, conditions, and price.

RESTRICTION OF USES IN "AREA A"

Declarant will restrict the use of a portion of the AMCO Property as more particularly described in Exhibit "1" under the heading "AREA A" (hereinafter called "Area A"). The use of Area A will be restricted to a pleasure craft marina or marinas and/or a commercial boat facility along with all related activities. Along with other related activities in Area A, space may include areas used for automobile parking, for vehicle loading/unloading and turn-around, for installation and use of a haul-out facility, for dry storage of boats, and for repair of boats. Additionally, Area A may be used for access to and from all other portions of the AMCO Property and adjoining tidelands.

CONDITION ON FINAL DESIGN

Declarant declares that it will design and construct its condominium development such that a corridor of 30 feet in width will be retained to the east of the northeasterly and easterly property line of the Washington State Ferry Repair Shops for

eventual access to the beach. No permanent structures shall be built within 30 feet of the then existing northeasterly and easterly boundaries of the tract of land now commonly known as the Washington State Ferry Repair Shops. This open area shall have its southern boundary at the ordinary high water line and shall encompass a total area of at least 3000 square feet.

RESTRICTION OF USES IN "AREA B"

Declarant will restrict the use of a portion of the AMCO property as more particularly described in Exhibit "1" under the heading "Area B" (hereinafter called "Area B"). The use of Area B will be restricted to a pleasure craft marina or marinas and/or a commercial boat facility along with all related activities.

COVENANT TO RUN WITH THE LAND

The covenants, conditions, and restrictions of this Declaration shall run with the land and bind the land forever, and shall be binding upon and inure to the benefit of all parties having any right, title or interest in the property or any part thereof, their heirs, successors and assigns, except as provided herein. This Declaration shall be filed with the Kitsap County Auditor.

AMENDMENT

The Shorelines Hearings Board of the State of Washington shall have the power to amend this Declaration upon the approval of the Declarant if it is demonstrated that the covenants, conditions, and restrictions herein would restrict the land so that there is no reasonable economic use for the Declarant. For a period of ten years from the date of this Declaration, the Shorelines Hearings Board of the State of Washington shall

not have such power to amend this Declaration. All parties to Shorelines Hearings Board Nos. 114 and 114-A shall be notified of any request for amendment and notice shall be published in the Bainbridge Review or comparable paper. The Declarant shall have the burden of showing that no reasonable economic use could be made by him of the property.

DEDICATION

Declarant reserves the right to dedicate or transfer all or any part of the property to any public agency, authority, or utility.

ENFORCEMENT

The City of Winslow shall have the right to enforce by any proceeding at law or in equity any covenants, conditions, and restrictions imposed by the provisions of this Declaration.

SEVERABILITY

Invalidation of any one of these covenants, conditions, or restrictions by judgment or court order shall in no way affect any other provision hereof, which shall remain in full force and effect.

IN WITNESS WHEREOF, the undersigned, being the Declarants herein, have executed this instrument this ____ day of _____, 1974.

AMCO INVESTMENTS, INC.
a Washington corporation

Caroline J. Lovell

By _____
Its President

E. S. Lovell

Edward Cunningham

Hazel M. Lovell

Darlene Cunningham

W. D. Lovell

STATE OF WASHINGTON)
) ss.
COUNTY OF)

On this _____ day of _____, 197 before me, the undersigned, a Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared _____, to me known to be the President of AMCO Investments, Inc., the corporation which executed the foregoing instrument, and acknowledged the said instrument to be the free and voluntary act and deed of said corporation, for the uses and purposes therein mentioned, and on oath stated that they were authorized to execute the said instrument and that the seal affixed is the corporate seal of said corporation.

WITNESS my hand and official seal hereto affixed the day and year next above written.

Notary Public in and for the State
of Washington, residing at

STATE OF WASHINGTON, {
County of } ss.

On this day personally appeared before me

to me known to be the individual described in and who executed the within and foregoing instrument and acknowledged that signed the same as free and voluntary act and deed, for the uses and purposes therein mentioned

GIVEN under my hand and official seal this _____ day of _____, 197

Notary Public in and for the State of Washington,
residing at

AMCO PROPERTY

The legal description of the "AMCO Property" is:

That portion of Government Lot 3, Section 26, Township 25 North, Range 2 East, W.M., in Kitsap County, described as follows:

Beginning at the Northwest corner of Government Lot 4 of said Section 26 (a concrete monument);
 thence along the North line of said Government Lot 4 and Government Lot 3 South 88°40'46" East 2624.90 feet to the Northeast corner of said Government Lot 3 (a concrete monument);
 thence South 45°50'32" West 868.43 feet to concrete monument No. 1 and the true point of beginning;
 thence North 76°07'59" West 293.16 feet to concrete monument No. 5;
 thence North 72°44'43" West 298.97 feet to concrete monument No. 6;
 thence South 6°15' West 255.78 feet to a point on the Easterly boundary of the Plat of Staffords Addition to Winslow, as recorded in Volume 8 of Plats, pages 11, 12 and 13, records of said County;
 thence along said Easterly boundary South 5°19'04" West 33.38 feet to the angle point on Lot 7 Block 5 of said Plat,
 thence South 3°55'36" East 50.10 feet;
 thence leaving said boundary South 5°02' East 79.30 feet to Point "A" on the balanced Government Meander Line of Eagle Harbor;
 thence along said Meander Line South 48°03'42" East 486.86 feet;
 thence North 64°14'18" East 536.15 feet to Point "B";
 thence leaving said Meander Line North 37°18'11" West 95.21 feet to concrete monument No. 4;
 thence continued North 37°18'11" West 183.09 feet to concrete monument No. 3;
 thence North 32°01'38" West 100.26 feet to concrete monument No. 2;
 thence North 36°45'37" West 54.32 feet to the true point of beginning;
 EXCEPT that portion, if any, lying within Condemnation by the state of Washington, under Superior Court Cause No. 47871; TOGETHER WITH tidelands to the line of Extreme Low Tide, as conveyed by the state of Washington, lying Easterly of a line running South 24°14' West from said Point "A" and Westerly of a line running South 8°51'40" East from said Point "B";
 EXCEPT that portion of Government Lot 3, Section 26, Township

continued....

25 North, Range 2 East, W.M., and all second class tidelands in front thereof, described as follows:

Starting at the Northeast corner of Government Lot 3, said Section 26,
 thence South 1°24'44" West 766.44 feet,
 thence South 49°08'53" West 10.91 feet;
 thence South 63°30'49" West 740.11 feet;
 thence South 8°05'36" East 179.65 feet to the true point of beginning,
 thence South 82°28'04" West 177.50 feet (hereinafter called Segment "X");
 thence North 8°05'36" West 238.10 feet (hereinafter called Segment "Y");
 thence South 82°27'04" West 169.89 feet;
 thence South 48°33'39" West 71.18 feet;
 thence South 13°15'19" West 218.39 feet,
 thence South 8°05'36" East to the U. S. Pierhead Line;
 thence North 73°52'40" East along said Pierhead Line to a point which bears South 8°05'36" East from the true point of beginning,
 thence North 8°05'36" West to the true point of beginning;

TOGETHER WITH a non-exclusive easement to construct, improve, repair and maintain an access road and an excavation and embankment across, over and upon the following described property; That portion of Government Lot 3 in Section 26, Township 25 North, Range 1 East, W M in Kitsap County, Washington, more particularly described as follows

Commencing at the Northwest corner of Government Lot 4 of said Section 26(a concrete monument), thence along the North line of said Government Lot 4 and Government Lot 3 South 88°40'46" East 2624.90 feet to the Northeast corner of said Government Lot 3 (a concrete monument), thence South 45°50'32" West 868.43 feet to concrete monument No 1, thence North 76°07'59" West 125.54 feet to the True Point of Beginning, thence continuing North 76°07'59" West 30.10 feet, thence North 9°09'42" East 251.2 feet to an intersection with the Southwesterly margin of Olympic Drive S E , thence South 52°03'01" East along said margin 34.23 feet to a point North 9°09'42" East of the True Point of Beginning, thence South 9°09'42" West 237.19 feet to the True Point of Beginning.

Situate in Kitsap County, Washington.

AREA A

A legal description will be supplied of that portion of the AMCO Property south and west of the red lines drawn on the attached map

AREA B

A legal description will be supplied of all tidelands owned by AMCO between the Washington State Ferry Shops and the Washington State Ferry Terminal.

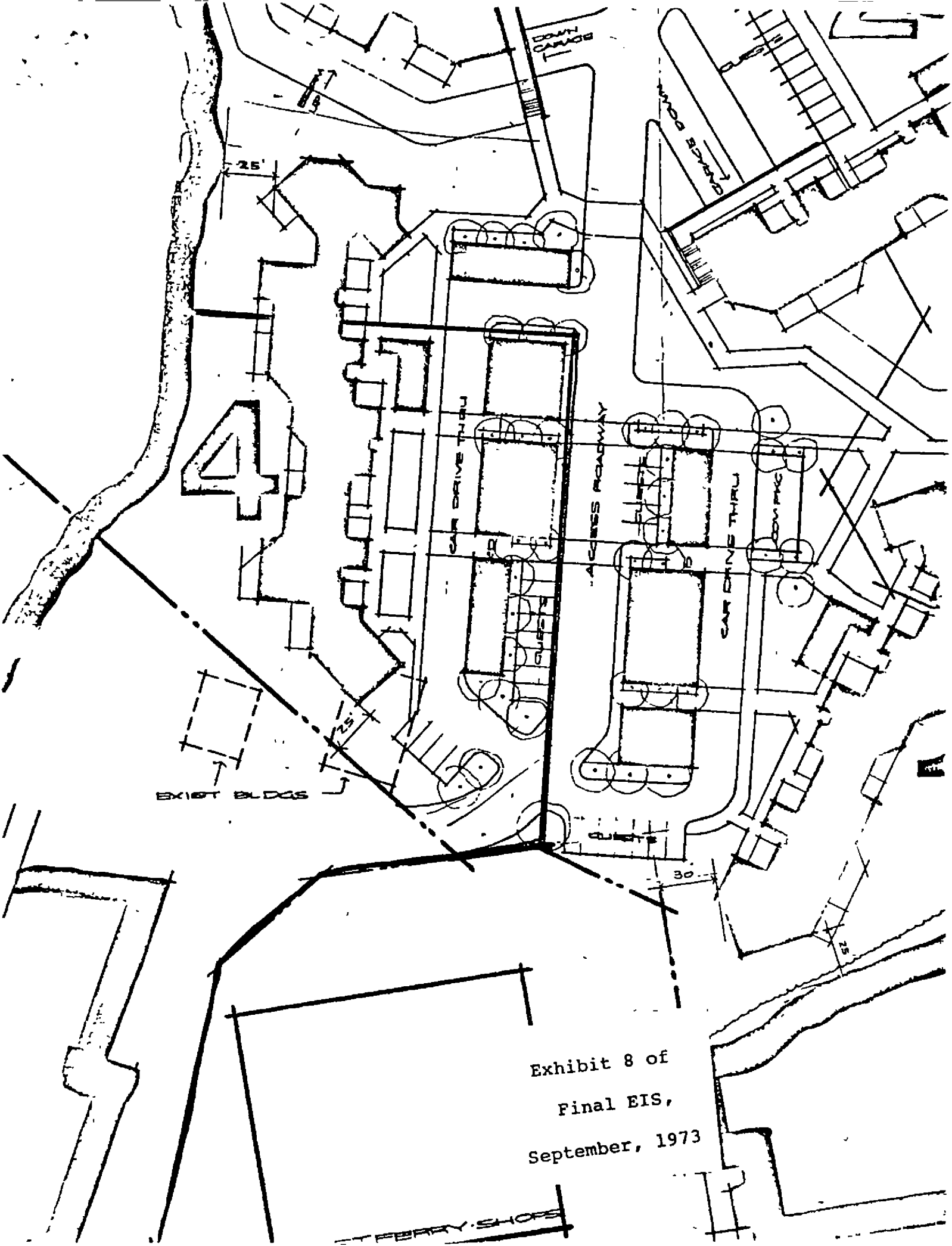


Exhibit 8 of
Final EIS,
September, 1973

BEFORE THE
SHORELINES HEARINGS BOARD
STATE OF WASHINGTON

BAINBRIDGE ISLAND CONCERNED)
CITIZENS,)
Appellant,)
v.)
AMCO INVESTMENTS INC. and)
CITY OF WINSLOW,)
Respondents.)

SHB No. 114-A
ORDER ON REMAND

A formal hearing in this matter was held in Seattle, Washington, on October 7 and 8, 1976, pursuant to a Remand and Order on Stipulation and Agreement entered in Division II, Washington State Court of Appeals on July 27, 1976. Under the terms of the Court's Order, the hearing was "limited solely to the question of the size of the land area needed for a marina development" and "evidence concerning the current status of the property" was also received.

Members of the Board present at the hearing were Art Brown, Chairman, Chris Smith, W. A. Gissberg, Robert F. Hintz, Ralph A.

1 Beswick, and Robert E. Beaty. Members Hintz, Beswick, and Beaty
2 participated in the initial five day hearings in this matter and signed
3 the Board's Final Order issued September 12, 1974.

4 I. CURRENT STATUS OF PROPERTY

5 The stipulated chronology reciting land uses of the project site
6 and actions relative thereto is incorporated herein responsive to the
7 court's directive that the current status of the property be ascertained.

8 II. MARINA DEVELOPMENT--LAND AREA NEEDED

9 The Board first considered those elements necessary to assure the
10 continued operation of a marina at the present marina site, Area A,
11 with upland accommodations as generally described in the Board's
12 Preliminary Memorandum, i.e.,

13 . . . said area to be large enough to accommodate these details:

- 14 a. For every boat moorage reserved for or used by a
15 condominium resident, there be provided and avail-
16 able to the general public two such moorages.
17 b. For every boat moorage, there be provided at
18 least one upland adequate vehicular parking space.
19 c. In addition, there be provided additional upland
20 space for installation and use of the usual
21 attendant to a modern marina.

22 It is the Board's conclusion that this acreage, Area A, is of a
23 size and character sufficient to guarantee a marina development
24 consistent with the requirements outlined in the Board's Preliminary
25 Memorandum issued May 22, 1974.

26 The Board also considered the extent of the assurance which was
27 given in the Final Order regarding the use of Area B as a pleasure
craft marina and/or a commercial boat facility.

With regard to Area B, it is the Board's conclusion that the

1 language of the Preliminary Memorandum describing marina needs applied
2 only to Area A and was not intended to dictate the development or
3 specific configuration of Area B. What was required under the Board's
4 earlier Order and continues to be required under the Order issued this
5 date is that Area B is to be developed, if at all, only as a marina
6 or commercial boat facility.

7 III. RESTRICTIVE COVENANTS

8 The Covenants, filed with the Kitsap County Auditor by Respondent
9 AMCO on April 1, 1975, satisfy the condition of the Board's Order that
10 permissible uses on Area A be restricted to assure that such acreage
11 will be used for a marina or related activities:

12 RESTRICTION OF USES IN "AREA A"

13 Declarant will restrict the use of a portion of the
14 AMCO property as more particularly described in Exhibit "1"
15 under the heading AREA A: (hereinafter called "Area A").
16 The use of Area A will be restricted to a pleasure craft
17 marina or marinas and/or a commercial boat facility along
18 with all related activities. Along with other related
19 activities in Area A, space may include areas used for
20 automobile parking, for vehicle loading/unloading and
21 turn-around, for installation and use of a haulout
22 facility, for dry storage of boats, and for repair of
23 boats. Additionally, Area A may be used for access to
24 and from all other portions of the AMCO property and
25 adjoining tidelands.

26 However, the Covenants as amended and filed with the Kitsap County
27 Auditor on April 8, 1975 would permit expansion of the uses within
Area A such that alternate albeit water-dependent uses could effectively
remove the existing marina or preclude its improvement or expansion.

28 RESTRICTION OF USES IN "AREA A"

29 Declarant will restrict the use of a portion of the
30 AMCO property as more particularly described in an Exhibit
31 "1" under the heading "AREA A" (hereinafter called "Area
32 A"). The use of "Area A" will be restricted to exclude

1 residential uses, and will be limited to those uses which
2 are water-related, water-dependent or in some way water-
oriented in nature.

3 It is the determination of the Board that the "Amended
4 Covenants" are not "similar" to Exhibit A of the Board's Order in this
5 material respect. Further, by its own terms the Covenants could be
6 amended only by application to the Shorelines Hearings Board at the end
7 of a ten year period. In addition to these concerns, the Board also
8 questions the form of the amendment as filed on April 8, 1975.

9 If the Amended Covenants were valid, however, Bainbridge Island
10 Concerned Citizens is deemed to have waived, through its attorneys, any
11 right to object to such a broadening of permissible uses in Area A and
12 is estopped from raising such expansion of use as a basis for the Board's
13 prohibiting the development.

14 IV. CONCLUSION

15 The P.U.D. project as approved by the City of Winslow on
16 November 3, 1975 is a modification of the project as authorized by the
17 Board's Order of September 12, 1974, and is consistent with such
18 authorization.

19 IT IS ORDERED that the Findings of Fact, Conclusions of Law, and
20 Order issued by the Shorelines Hearings Board on September 12, 1974, as
21 interpreted herein be and they are reaffirmed.

1 DATED this 27th day of October, 1976.

2 SHORELINES HEARINGS BOARD

3 Art Brown

4 ART BROWN, Chairman

5 Robert E. Beatty

6 ROBERT E. BEATTY, Member

7 Ralph A. Beswick

8 RALPH A. BESWICK, Member

9 (see concurring opinion)

10 W. A. GISSBERG, Member

11 (see concurring opinion)

12 ROBERT F. HINTZ, Member

13 (see concurring opinion)

14 CHRIS SMITH, Member

1 Gissberg, W. A., Hintz, Robert F., and Smith, Chris (concurring
2 opinion)--we concur in the Order of the Board for the following reasons:

3 Subsequent to the filing of the first Declaration of Covenants,
4 AMCO sold Area "A" to Trask who was represented by the same attorneys
5 who then and now represent Appellant. As a condition of closing the
6 sale of Area "A" to Trask, his attorneys required AMCO to change the
7 contents of the first Declaration by executing a second one drafted by
8 Trask's attorneys and which purported to change the uses allowable in
9 Area "A" from "a pleasure craft marina . . . and/or a commercial
10 boat facility along with all related activities" to excluding
11 residential uses and "limited to those uses which are water-related,
12 water-dependent or in some way water-oriented in nature." Appellant
13 now contends that because AMCO has sold that portion of the site
14 (Area "A") and since the second Declaration does not require a marina
15 or commercial boat facility, this Board should "adopt a covenant
16 substantially similar to that adopted previously to be applied to a
17 portion of the remaining AMCO property."

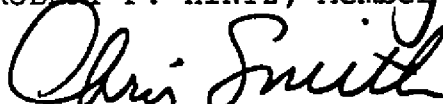
18 There is ample evidence to conclude that Area "A" is of sufficient
19 size to meet the directives of the Board's Memorandum. Further, the
20 first Declaration is still in effect notwithstanding the fact that a
21 second Declaration was filed for record. By virtue of the express
22 terms of the Declaration, title to the land known as Area "A" became
23 subject to all the covenants, conditions and restrictions of the
24 first Declaration and runs with and binds the land and any owner
25 thereof subject only to the conditional power of the Shorelines
26 Hearings Board to amend the Declaration. In other words, once the

1 first Declaration was filed it, and no other subsequent Declaration,
2 became effective and enforceable if the remaining AMCO property is
3 developed under its shoreline permit. AMCO simply did not and does
4 not now have the power to effectively amend its Declaration, regard-
5 less of its intent to do so. The Declaration will have no force or
6 effect, as a matter of law, if AMCO does not begin to construct and
7 complete the construction within the time periods provided by its
8 substantial development permit.

9 Appellant objects to the fact that there has been a "change in the
10 terms of the covenant on Area 'A.'" While I believe that there has been
11 no lawful change, (and hence, there is no change) even if there was,
12 Appellant cannot complain. The so-called "change" of the Declaration
13 was sought and required by Appellant's attorneys at a time when an
14 express agency relationship existed between said attorneys and Trask
15 and said attorneys and Appellant. Such attorneys were possessed of
16 actual authority to bind Trask and with apparent, implied or ostensible
17 authority to bind Appellant in soliciting from AMCO the very change in
18 covenants to which the attorneys now object.

19 
20 W. A. GISSBERG, Member

21 
22 ROBERT F. HINTZ, Member

23 
24 CHRIS SMITH, Member